

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ANIBAL CANALES, JR.,	§	
Petitioner,	§	
	§	
v.	§	Civil Action No. 2:03CV69
	§	(Judge T. John Ward)
RICK THALER, Director, Texas	§	(Death penalty case)
Department of Criminal Justice,	§	
Correctional Institutions Division,	§	
Respondent.	§	

**RESPONDENT THALER'S MOTION
FOR EXTENSION OF TIME WITH BRIEF IN SUPPORT**

Texas death-row inmate Canales seeks habeas corpus relief. *See* 28 U.S.C. § 2254 (West 2011). This Court signed an order setting a schedule for postdiscovery briefing on April 28, 2011. For reasons that still are unclear, the Director was not served with a copy of the order. Neither was the undersigned or co-counsel. The Director received a copy of Canales's Supplement to Petition for Writ of Habeas Corpus (ECF¹ No. 121) on July 15, 2011, after it was filed on July 14. The Director did not receive a copy of the Court's April 28, 2011 order until a copy was forwarded to the undersigned by opposing counsel on July 18, 2011. Pursuant to the Court's April 28, 2011 order, the petitioner had twenty-one days after the completion of depositions to file supplemental briefing, that

¹ "ECF" refers to the documents filed in the district court's electronic case filing system, followed by the document number.

is, until June 23. (Order.) The Director then had fourteen days in which to file a response. Hence, after the petitioner filed his supplemental briefing on July 14, twenty-one days after the completion of depositions on June 23, the Director was required to respond by July 28. Had the Director timely received a copy of the April 28, 2011 order, he would have had, roughly, from April 28 to July 28 to prepare his response, some ninety-one days. And the undersigned and co-counsel could have arranged briefing and work schedules to accommodate the briefing. To respond to Canales's supplemental briefing, which comprises some seventy-one pages and seventy-seven exhibits, the Director seeks an extension of time. The Director seeks an extension up to and including October 17, 2011, roughly representing the preparation period Director would have enjoyed had he timely received a copy of the April 28, 2011 order.

The Director also needs additional time because—

1. The undersigned is scheduled to be out of the office from August 1 through 5, 2011.
2. The undersigned has been preparing responses or other pleadings in connection with *Ward v. Thaler*, 3:10-cv-02101-N-BH (N.D. Tex.); *Medina v. Thaler*, H-09-CV-3223 (S.D. Tex.); *Tamayo v. Thaler*, No. 11-70005 (5th Cir.); and *Gates v. Thaler*, No. 11-70023 (5th Cir.).

3. The undersigned expects to be involved with last-minute litigation in connection with two scheduled executions, Larry Ray Swearingen on August 18 and Ivan Abner Cantu on August 30.
4. The issues involved in responding to Canales's supplemental petition are complex, involving questions of juror bias, prosecutorial error, agency, confrontation, and entail factual research and record review.

This request is not designed to harass the petitioner or to delay this proceeding. The Director asks the Court to grant an extension in which to file a response up to and including October 17, 2011.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

CERTIFICATE OF CONFERENCE

I, Thomas M. Jones, Assistant Attorney General of Texas, certify that I spoke with counsel for Petitioner by telephone on July 18, 2011, and was told that in connection with this motion the petitioner takes no position; that is, the motion is neither opposed nor unopposed.

/s/ Thomas M. Jones
THOMAS M. JONES
Assistant Attorney General

CERTIFICATE OF SERVICE

I do hereby certify that on July 20, 2011, I electronically filed the foregoing pleading with the Clerk of the Court for the U.S. District Court, Eastern District of Texas, using the electronic case-filing system of the Court. The system sent a “Notice of Electronic Filing” to the following attorneys of record, who consented in writing to accept this Notice as service of this document by electronic means:

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